



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

Docket No. [USCG-2022-0371]

RIN 1625-AA09

Drawbridge Operation Regulation; Atlantic Intracoastal Waterway (AICW) and Miami Beach Channel, Miami, FL

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to modify the operating schedule that governs the West 79th Street Bridge crossing the Atlantic Intracoastal Waterway (AICW), mile 1084.6 at Miami, Florida and the operating schedule that governs the East 79th Street Bridge crossing Miami Beach Channel, mile 2.20 at Miami Beach, FL. This action will place the East and West 79th Street Bridges crossing Miami Beach Channel and Atlantic Intracoastal Waterway, Miami, FL on a once an hour opening schedule during peak traffic hours, Monday through Friday, except Federal holidays. This action is intended to reduce vehicular traffic caused by these bridges opening at their current schedule. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must reach the Coast Guard on or before [INSERT DATE **45** DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number USCG-2022-0371 using Federal Decision Making Portal at <https://www.regulations.gov>.

See the “Public Participation and Request for Comments” portion of the

SUPPLEMENTARY INFORMATION section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail LTJG Benjamin Adrien, USCG Sector Miami Waterways Division Chief, the Coast Guard; telephone 305-535-4307 e-mail Benjamin.d.adrien@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
OMB	Office of Management and Budget
NPRM	Notice of Proposed Rulemaking (Advance, Supplemental)
§	Section
U.S.C.	United States Code
FDOT	Florida Department of Transportation

II. Background, Purpose and Legal Basis

The West 79th Street Bridge crossing the AICW, mile 1084.6, at Miami, FL is a double-leaf bascule bridge with a 21 foot vertical clearance (25 feet charted at the center span) at mean high water in the closed position. The normal operating schedule for the bridge is set forth in 33 CFR 117.261 (mm-1). The East 79th Street Bridge crossing the Miami Beach Channel, mile 2.20, at Miami Beach, FL is a double-leaf bascule bridge with a 21 foot vertical clearance at mean high water in the closed position. The normal operating schedule for the bridge is set forth in 33 CFR 117.304. Navigation on the waterways consists of recreational and commercial mariners.

North Bay Village, with the support of the bridge owner Florida Department of Transportation (FDOT), requested the Coast Guard consider allowing the drawbridges to remain closed to navigation during morning and evening rush hour with top of the hour openings provided at pre-determined times. This proposed regulation would reduce vehicle traffic backups without unreasonably restricting vessel traffic by scheduling one

opening per hour during peak traffic times, thereby balancing the needs of both modes of transportation.

III. Discussion of Proposed Rule

The proposed rule will allow the drawbridges to only open once an hour during weekday rush hours. Under this proposed rule the drawbridges would operate as follows, Monday through Friday, except Federal Holidays, both drawbridges need only open on the hour between 7 a.m. and 10 a.m. Between 10 a.m. to 4 p.m. the drawbridges need only open on the hour and half hour. From 4 p.m. to 7 p.m. both drawbridges need only open on the hour. From 7 p.m. to 7 a.m. the drawbridges shall open on signal. Saturday, Sunday, and Federal Holidays the drawbridges shall open on signal. Vessels that can pass beneath the bridge without an opening may do so at any time.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on these statutes and Executive Orders and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the fact that vessels can still transit the bridge at designated times throughout the day, and vessels that can transit under the bridge without an opening may do so at any time. This proposed rule will further meet the reasonable needs of navigation while taking into consideration the reasonable needs of vehicular traffic.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the bridge may be small entities, for the reasons stated in section IV.A above this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we want to assist small entities in understanding this proposed rule. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would call for no new collection of information under the

Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520.).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132 (Federalism), if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule will not result in such an expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01, Rev.1, associated implementing instructions, and

Environmental Planning Policy COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321-4370f). The Coast Guard has determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule promulgates the operating regulations or procedures for drawbridges. Normally such actions are categorically excluded from further review, under paragraph L49, of Chapter 3, Table3-1 of the U.S. Coast Guard Environmental Planning Implementation Procedures.

Neither a Record of Environmental Consideration nor a Memorandum for the Record are required for this proposed rule. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal Decision Making Portal at <https://www.regulations.gov>. To do so, go to <https://www.regulations.gov>, type USCG- 2022-0371 in the search box and click "Search." Next, look for this document in

the **Search Results** column, and click on it. Then click on the **Comment** option. If your material cannot be submitted using <https://www.regulations.gov>, contact the person in the FOR FURTHER INFORMATION CONTACT section of this document for alternate instructions.

To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select “Supporting & Related Material” in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the <https://www.regulations.gov> Frequently Asked Questions webpage. We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

We accept anonymous comments. Comments we post to <https://www.regulations.gov> will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS’s eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05-1; DHS Delegation No. 0170.1.

2. Amend §117.261 by removing paragraph (mm-1), adding paragraph (mm)(1), and reserving paragraph (mm)(2) to read as follows:

§ 117.261 Atlantic Intracoastal Waterway from St. Marys River to Key Largo

(mm)***

(1) West 79th Street Bridge, mile 1084.6, at Miami, Florida. The draw shall operate as follows:

(i) Monday through Friday (except on Federal holidays)

(A) 7 a.m. to 10 a.m. the draw need only open on the hour;

(B) 10 a.m. to 4 p.m. the draw need only open on the hour and half

hour;

(C) 4 p.m. to 7 p.m. the draw need only open on the hour;

(D) 7 p.m. to 7 a.m. the draw shall open on signal.

(ii) Saturday, Sunday and Federal holidays the draw shall open on signal.

(2) [Reserved]

3. Revise §117.304 to read as follows

§ 117.304 Miami Beach Channel

The draw of the East 79th Street Bridge, mile 2.20, at Miami Beach, Florida. The draw shall operate as follows:

(a) Monday through Friday (except on Federal holidays)

(1) 7 a.m. to 10 a.m. the draw need only open on the hour;

(2) 10 a.m. to 4 p.m. the draw need only open on the hour and half hour;

(3) 4 p.m. to 7 p.m. the draw need only open on the hour;

(4) 7 p.m. to 7 a.m. the draw shall open on signal.

(b) Saturday, Sunday and Federal holidays the draw shall open on signal.

Dated: May 25, 2022.

Brendan C. McPherson,
Rear Admiral, U. S. Coast Guard,
Commander Coast Guard Seventh District.

